



BULLETIN

Volume 8, Issue 1

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Risk Management Division

Mission Statement

To protect the assets of the State of North Dakota - its people, property, and financial resources - so that the State can continue to meet its obligations to its citizens.

\$47,647 of Potential \$111,294 Discount Claimed

We are pleased to report that twenty-five state entities qualified for the initial RM Contribution Discount program. Collectively those entities realized a savings of \$47,647 in their contributions for FY '02.

20 of those 25 entities qualified for the full 10% discount.

Next year we would like to see more entities in a position to realize similar savings - up to the full potential discount of \$111,294. The primary benefit to qualifying for the discount is establishing proactive loss control measures that result in reduced exposures to loss.

Remember, in order to qualify for next year's discount, your application is due in our office by April 1, 2002. Next year's application form has been revised slightly. A copy is enclosed and is available on our website at www.discoverND.com/risk.

To facilitate next year's application we recommend you provide the RM Division copies of your loss control

committee minutes that report: 1) the findings from the annual inspection of your facility; 2) that the committee has completed the annual review of your disaster, severe weather, bomb threat procedures, contingency plans, and record management plans; 3) that your entity has established sexual harassment, workplace violence, hostile work environment, and substance abuse policies, and that there is documentation in place that those policies are annually reviewed by all employees and by new employees at the time of

hiring; and 4) that executive sessions were held to review loss runs. Receiving those minutes will document compliance with questions 5, 6, 7, and 8 of the application form. Answering the remaining questions "Yes" or "No" will complete the process.

Records Retention of Loss Control Committee Meeting Minutes

When the Risk Management Division first developed the criteria for Loss Control Committees back in 1996, it was our recommendation that minutes

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of each meeting be kept on file for three years, with a report of committee activities sent each year to the State Risk Manager. *Due to fact that submitting minutes of the Loss Control Committee meetings to the RM Division documents compliance with the discount program, and due to legislative actions addressing the recording of executive sessions, it is time to revise our recommendations.*

The 1997 Legislature enacted N.D.C.C. 32-12.2-12 to provide that portions of Loss Control Committee meetings are exempt from the open meetings laws if: public notice of the meetings along with the agenda are properly posted; access to the open portion of the meeting is provided; minutes of the open portion of the meeting are kept; and a tape recording of the closed or executive portion of the meeting is made. *(For more detailed information on how to notice and conduct loss control committee meetings see Section 4.2 of the Risk Management Manual.)*

The 2001 Legislature, in Section 10 of Senate Bill 2117, revised N.D.C.C. 44-04-19.2, the section of the code that relates to electronic taping of executive sessions. That Bill provides that, "All recordings under this subsection must be retained for a minimum of six months after the executive session that is the subject of the recording."

Because the recordings of the executive session is part of the record of a loss control meeting, the RM Division feels the tapes containing those executive sessions should be retained for the same period of time that the minutes are retained. And, because the minutes can be used to document annual compliance with the requirements for the discount program, it is our recommendation that entity loss control minutes and the tapes of the executive sessions of those meetings be retained for **one calendar year following the date of the meeting**. *Remember to revise your records retention schedule to reflect the changes your entity adopts.*



Loss Control Tools

Do you have a plan in place to adequately communicate with the public if a disaster were to impact the operation of your agency or facility? We recommend that you establish a disaster team to develop a plan and oversee its implementation if a disaster occurs.

The disaster team should be comprised of a representative from management, legal, and your risk management contact.

A well drafted plan would provide direction to:

1. Coordinate with law enforcement and medical providers when necessary.
2. Designate a spokesperson.
3. Determine if it is necessary to establish a news conference center/ media staging area that is accessible and not in the way of operations.
4. Restrict access to the staging area.
5. Determine whether a news conference or news release is the appropriate means of conveying information to the public.
6. Draft a statement/news release.
7. Decide the need to assign videographers and photographers to take pictures of the scene.
8. Decide whether it is appropriate to allow location shooting by TV and newspaper photographers. Determine when, where, and who will accompany the media.
9. Determine what means of internal communications will be used.
10. Alert switchboard where to refer calls that pertain to the crisis.

Security Awareness and Proper Internet/E-mail Use in the Workplace



In order to address the liability exposures presented by the improper use of the Internet and e-mail, the Risk Management Division recommends state employees who have Internet access complete the tutorial found at <http://www.state.nd.us/itd/security/safe> designed by ITD to educate state employees on the issues of information and technology security. In addition, we recommend all new hires that will be provided Internet access be required to complete the tutorial prior to issuing them a password to the State's system.

The Risk Management Division endorses the 2-hour training session on Security Awareness and Proper Internet/E-mail Use in the Workplace presented by the Information Technology Department and Central Personnel Division to assist your employees in understanding the ramifications of misuse of the Internet and e-mail. The training addresses the employer's legal right to monitor all activity on any Internet access it provides, personal use of employer provided Internet access, improper use of Internet access, and information security. Contact CPD for the training schedule.

11. Plan status updates as appropriate.
12. Perform a follow-up assessment to review the crises team activities to determine what worked, what did not, and what changes should be made for future improved crises management.

Circumstances that may require a news release:

- * An accident, fire, or explosion that results in serious injury, death, or considerable property damage.
- * A health or environmental incident or discovery of a health or environmental hazard that may affect employees, visitors, the surrounding community, or the environment.
- * A serious traffic, rail, or air accident at the facility and/or involving agency personnel.
- * Sabotage, abduction, bomb threats, or acts of terrorism involving agency personnel or property.
- * News of an incident that is likely to be known by employees or circulated in the community creating misleading impressions.

Guidelines to be considered when writing a news release:

1. Tell the most important information in your lead paragraph.
2. Answer four of the five "W"s – who, what, when, and where. Do not explain why the event occurred unless complete information is available.
3. Attribute information to a qualified source.
4. Write remaining information in descending order of importance.
5. Explain technical points in simple language.
6. Be concise.
7. Do not speculate - report only the facts.

Proactive Tools to Prevent a Lawsuit

The last two editions of the Risk Management Bulletin have featured articles on how and when a state employee can be sued and how those lawsuits evolve. This month we will discuss measures state agencies and employees can implement to reduce the probability of a lawsuit or to ensure a favorable outcome when a suit is filed - the basic risk management principles of *assessing* and *controlling* your risks of exposure.

Assessment - The process of identifying your entity's activities that could result in a lawsuit. Some are obvious such as operating a motor vehicle on State business (potential for an accident) or providing services to the public that require them to physically come to your worksite (potential for a slip and fall in your parking lot or walkways). However, you need to "think outside of the box" to identify exposures that are not as obvious.

Controlling - Implementing programs to address identified exposures. One method would be to determine if the exposure can be transferred through appropriate contract language. Or, can the exposure be eliminated by discontinuing the task? If not, are there policies and procedures in place directing how the task should be performed that will provide defenses should a lawsuit be brought?

The Risk Management Fund loss history shows that to date the most costly type of tort lawsuit the State experiences are those involving employment liability issues - primarily discrimination claims. This type of loss is a classic example of how having the proper policies in place, the State and state employees would be provided affirmative defenses that may result in the suit being dismissed early in the litigation. Not only would that result in a significant cost savings, it would eliminate the stress associated with being involved in a lawsuit. Even if the lawsuit is not dismissed, following proper procedures should ensure a more favorable resolution of the case.

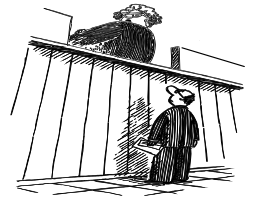
Other examples of cost and time savings as the result of proactive procedures would be

slip, trip and fall claims on sidewalks and parking lots. If an entity has plans in place that prioritizes their snow and ice clearing activities based on location and use, it would be difficult for a plaintiff to prove negligence should they be injured by a fall on a sidewalk that had yet to be cleared because it was in an area that was scheduled to be cleared after the primary traffic areas were cleared.

Accordingly, Risk Management continues to recommend State entities develop policies and procedures for their identified exposures to loss; that those policies and procedures be documented; reviewed by all employees they affect at least annually; frequently updated; and that policy manuals contain the disclaimer. (See Risk Management Manual page 4.1-2 revised 8/01).

Destruction Hold Notice -

As important as implementing the processes of assessing and controlling risks of loss is the process of documenting your proactive procedures and properly retaining that documentation. The Risk Management Division endorses an effective records management program by all State entities. However, documents that may pertain to a lawsuit could be scheduled for disposal under a records management program. Courts have awarded sanctions when documents or computer records have been altered or destroyed after suit is filed or after a party becomes aware of a claim. Accordingly, it is imperative that agencies stop the destruction process under those circumstances. We recommend the effective tool to accomplish that end is to complete and implement SFN 52376, the Destruction Hold Notice.



This is the last article in the series discussing litigation issues that State employees should be aware of in order to ensure they are provided all protections available to them. For more information on State employee defense see Section 8 of the Risk Management Manual.

Risk Management Workers Compensation Program (RMWCP) REPORT



State employees who found it necessary to file a workers comp claim after July 1, 2001, probably haven't noticed any difference in how the claim has been handled - even though there have been some changes in how the State is providing workers compensation coverage for its employees.

What's different?

- 1) **The management of the claim.** As of July 1, 2001, copies of all workers compensation claims filed with North Dakota Workers Compensation (NDWC) are forwarded on to our office by NDWC. We will be monitoring all claim activities to ensure the claims are properly moving through the system.
- 2) **The deductible.** After NDWC determines the level of compensation the injured worker and the care provider are entitled to receive, a bill for those expenditures, up to a maximum of \$100,000 per claim, will be sent from NDWC to the Risk Management Division for payment. The establishment of this deductible will result in a significant cost savings to the State in premium costs.

What's the same?

- 1) **The management of the claim.** Case management for loss time injuries will continue to be provided by NDWC and its designated case management providers.
- 2) **Level of compensation.** The process NDWC has used in the past to determine the amount of compensation for a claim will not change. NDWC will continue to issue benefit checks.
- 3) **Forms.** As in the past, before a workers compensation claim can be processed by NDWC, Part 1 of the *SFN 2828 Worker's Claim for Injury* form must be completed by

the injured employee, Part C2 completed by his or her employer, and Part C3 completed by his or her medical providers. Parts C1 and C2 of the form are available online. Filing online is encouraged.

What's coming?

- 1) **The management of the claim.** In order to assist the RMWCP to monitor a workers compensation claim, we request an incident report be faxed to our office within 24 hours of the injury. The incident report should detail:
 - a) the employee's injury;
 - b) the cause of the injury;
 - c) contributing factors (ice on the sidewalk, faulty equipment, not implementing standard operating procedures, etc.); and
 - d) action taken to prevent future occurrences.
- 2) **Return to work.** In order to meet the directive of the 2001 Legislature to implement an inter-agency return-to-work program, the Risk Management Division is gathering information to draft proposed administrative rules for the program. Drafts of the proposed rules will be distributed to State agencies for comments. We request you evaluate the proposed rules based on effective current practices and concerns that need to be addressed.
- 3) **Communications.** When a draft of the proposed rules for the return-to-work program has been completed we will be scheduling regional meetings to provide an opportunity for discussion of the rules and development of the Risk Management Workers Compensation Program.

We are in the process of developing a listserve of the agency Workers Compensation contact people to facilitate sending updates and notices regarding the development of the program.

15-Passenger Van Rollover Risks

In April of 2001 the National Highway Traffic Safety Administration (NHTSA) issued a cautionary warning to operators of 15-passenger vans because of an increased rollover risk under certain conditions.

The report stated that 15-passenger vans have a rollover risk that is similar to other light trucks and vans when carrying a few passengers. However, the risk of rollover increases dramatically as the number of occupants increases from fewer than five occupants to over ten passengers. In fact, 15-passenger vans with 10 or more occupants had a rollover rate in single vehicle crashes that is nearly three times the rate of those that were lightly loaded. NHTSA's analysis indicated that loading the 15-passenger van causes the center of gravity to shift rearward and upward, thus increasing the likelihood of a rollover. The shift in the center of gravity will also increase the potential for loss of control in panic maneuvers.

Due to the identified risks, NHTSA recommends that only experienced drivers who understand and are familiar with the handling characteristics of a fully loaded van operate these vans. Because that has not been the case in the past and due to the risk involved, some states (especially universities) are discontinuing the use of 15-passenger vans.

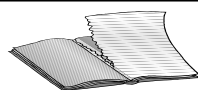
North Dakota State Fleet records show 60 crashes involving the 101 state-owned 12 to 15-passenger vans in the past 3 years.

North Dakota State Fleet records show 60 crashes involving the 101 state-owned 12 to 15-passenger vans in the past 3 years.

State Fleet is in the process of developing a program for operators of 12 to 15-passenger vans. Some issues to be addressed by the proposed program include:

- 1) A verification that all van drivers have a valid driver's license.
- 2) Each van driver completes a driver training program such as the FLI Van Driver Training Program provided by EIIA. For more information on training programs contact State Fleet or FLI at 1-800-354-9099 or www.flilearning.com.
- 3) Each driver should receive behind the wheel, on the road, training in a van with no passengers and at simulated maximum weight.
- 4) All van drivers and passengers must be required to wear safety belts when traveling in the van.
- 5) Tire pressures should be adjusted each trip per manufacturer's specifications to meet the demands of the trip.
- 6) Drivers are banned from using cell phones while driving.
- 7) Drivers should be limited as to the total hours they may drive a van in any 24 hour period.

Risk Management recommends agencies that use 12 to 15-passenger vans avail themselves of this program.



Revisions to the Risk Management Manual

It has been brought to our attention that it would be beneficial for those who need to be made aware of revisions we make to the Risk Management Manual if we identified the revisions. Accordingly, on the attached revised pages please note the solid lines in the left margins that identify changed sections, paragraphs, lines, or even words. We will continue to use these markings in the future. Please make sure that revisions are brought to the attention of those that need to know about them.

| Remove | Insert |
|---------------------------|---------------------------|
| Page 2.6-3 | Page 2.6-3 |
| Pages 4.0-1 through 4.0-4 | Pages 4.0-1 through 4.0-4 |
| Pages 4.1-1 and 4.1-2 | Pages 4.1-1 and 4.1-2 |
| Page 4.2-2 | Page 4.2-2 |

Risk Management Division

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CHECK IT OUT!!

Please check your address label.
Report any corrections to our office.

BULLETIN

New Staff - The Risk Management Division is pleased to announce that Derek Watkins has joined our staff to serve as Manager of the new Risk Management Workers Compensation Program.

Derek is well qualified to direct the State's single workers compensation and cross agency return-to-work programs established by the 2001 Legislature. For the past 4 years he has been the Risk Manager for the Department of Human Services. In that position his duties included managing their workers compensation and return-to-work programs. Prior to his tenure at Human Services, Derek was the Director of Worklife Occupational Health and Medicine at St. Alexius Hospital, and an environmental scientist with the ND State Health Department OSHA program.



Look for communications from Derek advising you of his progress with the development of these programs. We are committed to achieving a program that will benefit the State, its agencies and employees. Your comments and suggestions will be welcomed. Derek can be reached at dwatkins@state.nd.us or (701) 328-6513.

Risk Management Division Website Features

Visit our website at
www.discoverND.com/risk/ for standard
and updated features including:

- ◆ Personnel e-mail and telephone directory
- ◆ Risk Management Manual
- ◆ Reporting Forms (following page 3.5-1 of the manual)
 - *Incident Reort (SFN 50508)
 - *Notice of Claim (SFN 50552)
 - *Motor Vehicle Accident Report (SFN 51301)
 - *Destruction Hold Notice (SFN 52376)
- ◆ Facility Audit and Inspection Checklists (Page 4.3-1)
- ◆ Emergency and Disaster Procedures (Pages 4.5-1 through 4.6-5)
- ◆ Facility Use Agreement Form (Page 5.2-2)
- ◆ Waiver Forms (Pages 5.2-3 & 4)
- ◆ Risk Management Bulletins